

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 808 of 2005
In
SPECIAL CIVIL APPLICATION No. 12390 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)
Versus
KARSANBHAI DANABHAI BAGDA - Defendant(s)

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Appearance :

MR ASHISH M DAGLI for Petitioner No(s).: 1.

MR MAULIK J SHELAT for Respondent No(s).: 1.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date : 26/07/2005

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE R.S.GARG)

1.Heard learned counsel for the parties. The respondent, who was

employed as a Conductor with the present appellant was on duty on 19.07.1996 in a bus destined to Porbandar from Jamnagar, en route Checking Squad stopped the bus and found that despite collection of fare from as many as 16 persons, tickets were not issued to them. While the Checking Squad was making investigation the respondent allowed 8 passengers to run away from the spot. Finding the action of the respondent as a grave misconduct, charge sheet was issued to him, an opportunity of hearing was afforded and inquiry was concluded. During the course of the inquiry number of witnesses were examined, the workman examined one of the passengers, whose statements were recorded on the spot. The Inquiry Officer recorded finding against the interest of the workman, the findings were accepted by the disciplinary authority and capital punishment was awarded to the workman. Being aggrieved by the said findings the respondent-workman obtained a reference in the Labour Court, Rajkot as Reference No.328 of 1998. The learned Labour Court was requested by the respondent-workman to reconsider the findings. The learned Labour Court after hearing both the sides, observed that the findings recorded by the learned Inquiry Officer were not in accordance with law and were not supported by the evidence available on record. It accordingly set aside the findings, interfered in the matter and directed reinstatement without back wages and stoppage of three increments with cumulative effect.

2. Being aggrieved by the said award, Gujarat State Road Transport Corporation has filed Special Civil Application No.12390 of 2002 which came to be dismissed on 15.12.2003. The appellant-GSRTC is before this Court challenging the correctness, validity and propriety of the orders passed by the learned Single Judge.

3. Mr. Dagli, learned counsel for the appellant submitted that the

Labour Court was absolutely unjustified in interfering in the matter, especially in setting aside the findings recorded by the Inquiry Officer. He submits that the Inquiry Officer had taken into consideration the totality of the circumstances and the evidence available on the record. His submission before us is that if the earlier statement of the said witnesses/ passengers were available on the record, then the Labour Court should not have interfered in the matter. His further submission is that so far as the question of misbehaviour is concerned the Labour Court, so also the learned Single Judge erred in not appreciating that the report was proposed to be lodged with the Police, but the Police refused to register the evidence as it was a non cognizable offence. He submits that the orders passed by the learned Single Judge and the learned Labour Court deserve to be set aside. Learned counsel for the respondent has opposed the appeal.

4. So far as the question of re-appreciation of the evidence by the Labour Court is concerned the law is well settled and the Apex Court has, in unmistakable terms, observed that the Labour Court would have jurisdiction and authority to re-appreciate the evidence which was produced before the Inquiry Officer. The Supreme Court has further observed that if the Labour Court, on re-appreciation of the evidence, documentary and oral, is of the opinion that a particular finding should be recorded, then nothing stops or deters the Labour Court from recording such a finding. In the present case the Labour Court thought prudent to rely upon the statement of the passenger-witnesses and in our considered opinion it was not unjustified especially when no other passenger-witness was examined or some officer from the Police was examined to prove that no threat was extended. The present was a case where passenger-witness was giving an explanation that under what circumstances he had

placed or affixed his signatures on the statement.

5. So far as the findings recorded by the learned Labour Court are concerned the same have been examined by the learned Single Judge and he refused to interfere in the same. In a case where the Tribunal and the learned Single Judge recorded a particular finding and there is some evidence available to support a finding it will not be prudent for this Court to interfere in the matter.

6. So far as the submission about section 174 of the Code of Criminal Procedure, 1973 ("the Code" for brevity) is concerned, section 174 of the Code does not say that no report would be registered. Section 174 of the Code says that in a case of non cognisable offence the substance of the allegation would be recorded by the Police, copy of the report would be supplied to the complainant but the Police would not take cognisance of the offence. In the present matter even such copy of the report has not been produced on record. After giving our thoughtful consideration to the facts and findings recorded by the two courts we do not find present to be a fit case for interference. The Letters Patent Appeal is dismissed. No costs.

7. Consequently, Civil Application No.5531 of 2005 is dismissed.

(R.S. GARG, J.)

(RAVI R. TRIPATHI, J.)